

1 **CITY OF PIEDMONT**  
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9  
10 **Attorneys for Petitioner**  
11 **City of Piedmont**



12  
13 **BEFORE THE**  
14 **CALIFORNIA STATE WATER RESOURCES CONTROL BOARD**

15 **IN THE MATTER OF CITY OF PIEDMONT**  
16 **FOR REVIEW OF ORDER NO. R2-2009-**  
17 **0084 (NPDES NO. CA0038504) OF THE**  
18 **REGIONAL WATER QUALITY CONTROL**  
19 **BOARD, SAN FRANCISCO BAY REGION.**

20 **CITY OF PIEDMONT'S PETITION FOR**  
21 **REVIEW; PRELIMINARY POINTS AND**  
22 **AUTHORITIES IN SUPPORT OF**  
23 **PETITION (Wat. Code § 13320)**

1 Pursuant to Section 13220(a) of the California Water Code and Section 2050 of Title 23 of  
2 the California Code of Regulations, City of Piedmont ("Petitioner") hereby petitions the California  
3 State Water Resources Control Board ("State Board") for review of Order No. R2-2009-0084  
4 adopted by the California Regional Water Quality Control Board, San Francisco Bay Region  
5 ("Regional Board") on November 18, 2009. The Order is also National Pollutant Discharge  
6 Elimination System ("NPDES") Permit No. CA0038504 for the Petitioner's Sanitary Sewer  
7 Collection System ("Permit"). A copy of the Permit is attached to this Petition as Exhibit A. A  
8 copy of this Petition has been sent to the Regional Board. A copy of the Request to Prepare  
9 Record of Proceeding is attached as Exhibit B. The issues and a summary of the bases for the  
10 Petition follow. Petitioner reserves the right to file a more detailed memorandum in support of its  
11 Petition when the full administrative record is available and any other material has been  
12 submitted.<sup>1</sup> Petitioner requests a hearing in this matter.

13 The Petitioner has worked and will continue to work cooperatively with the Regional  
14 Board to achieve the common goal of protecting water quality in San Francisco Bay. The  
15 Regional Board in revising this Permit and the NPDES permits of other satellites has grappled  
16 with numerous complex technical and legal issues. On several issues, however, the Regional  
17 Board's legal analysis is incorrect and the Regional Board did not fully consider the facts  
18 surrounding both Petitioner and the other Satellites and the treatment entity. With great respect for  
19 the Regional Board and its staff, Petitioner must seek review of these issues from the State Board  
20 in order to preserve Petitioner's rights.

21 This Petition is a protective filing, and Petitioner requests that the State Board hold this  
22 petition in abeyance pursuant to Title 23, California Code of Regulations, Section 2050.5,  
23 subdivision (d) until further notice. If this Petition is not held in abeyance for any reason,  
24

25 <sup>1</sup> The State Water Resources Control Board's regulations require submission of a statement of points and authorities  
26 in support of a petition (23 C.C.R. §2050(a)(7)), and this document is intended to serve as a preliminary  
27 memorandum. However, it is impossible to prepare a complete statement and memorandum in the absence of the  
28 complete administrative record, which is not yet available. In addition, the Petitioner will introduce further evidence  
before the State Board as permitted by 23 C.C.R. § 2050.6 and Water Code § 13320(b) regarding economics and  
further impacts that was not available at the time of the Regional Board hearing.

Petitioner will file an amended petition and supporting declaration seeking a stay under Water Code § 13321(a) and Title 23, California Code of Regulations, Section 2053.

**1. NAME AND ADDRESS OF PETITIONER**

City of Piedmont

120 Vista Avenue

Piedmont, CA 94611

Telephone: (510) 406-8107 or (510) 420-3040

Attn: George S. Peyton, Jr., City Attorney

**2. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

The Petitioner seeks review of the Regional Board's Order No. R2-2009-0084, which was the issuance of the Permit (NPDES Permit NO. CA0038504).

**3. DATE OF THE REGIONAL BOARD ACTION**

The Regional Board issued its Order and adopted the Permit on November 18, 2009.

**4. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S ACTION WAS INAPPROPRIATE OR IMPROPER**

As set forth below, the action of the Regional Board with respect to Petitioner was not supported by the record, and was arbitrary, vague and in violation of law and policy.

**A. 40 C.F.R. § 122.41(e) does not Provide Authority for the Imposition of Discharge Prohibition III.D**

The Regional Board improperly relied on Section 122.41, subdivision (e), of Title 40 of the Code of Federal Regulations for the imposition of Discharge Prohibition III.D. Section IV of the Permit Fact Sheet states that Discharge Prohibition III.D is based on the operations and maintenance requirements in Section 122.41, subdivision (e), of Title 40 of the Code of Federal Regulations and "is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I&I." Section 122.41, subdivision (e), provides in relevant part, "[t]he permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit."

1 Section 122.41, subdivision (e), does not authorize the Regional Board to impose  
2 Discharge Prohibition III.D because Discharge Prohibition III.D is not an operation and  
3 maintenance requirement. Instead, Discharge Prohibition III.D is a narrative wet weather flow  
4 limit. The broad "cause or contribute" language in the discharge prohibition potentially makes the  
5 Petitioner liable for violations of Discharge Prohibition III.D if it contributes wet weather flows to  
6 East Bay Municipal Utility District's ("EBMUD") interceptor system on a day in which EBMUD  
7 discharges from its Wet Weather Facilities regardless of whether the Petitioner has properly  
8 maintained and operated its collection system to eliminate I&I. The Permit even acknowledges  
9 that Discharge Prohibition III.D. is designed to control peak wet weather flows. Section II.O of  
10 the Permit provides that "[t]he Regional Board intends to refine the narrative Prohibition III.D  
11 with a numeric flow limit or other more detailed set of standards that achieves the same result as  
12 the Prohibition when information necessary to develop the limit becomes available."<sup>2</sup> Similarly,  
13 Section IV.B.2 of the Permit states, "[i]mplementation of the General Collection System WDR  
14 requirements for proper operation and maintenance and mitigation of spills will satisfy the  
15 corresponding federal NPDES requirements specified in this Order *provided the Discharger*  
16 *reduces peak wet weather flows so that it does not cause or contribute to discharges at EBMUD's*  
17 *Wet Weather Facilities.*" (Emphasis added.) Accordingly, because Prohibition III.D is a wet  
18 weather flow limit rather than an operation and maintenance requirement, it is not authorized by  
19 Section 122.41, subdivision (e).

20 Moreover, if the purpose of Discharge Prohibition III.D was merely to ensure that the  
21 Petitioner properly maintains and operates its collection system to reduce I&I, Discharge  
22 Prohibition III.D would be superfluous because Section IV.B.2 of the Permit requires the  
23 Petitioner to "properly operate and maintain its collection system, which includes but is not  
24 limited to controlling inflow and infiltration." Similarly, the standard permit conditions set forth

25 \_\_\_\_\_  
26 <sup>2</sup> To the extent that this quoted language prejudices how Prohibition III.D will be refined in the future, Petitioner  
27 contends that action is inappropriate and premature. Similar language is included at page F-13 and/or F-14, and  
28 Petitioner objects to that language as well. The proper manner of refining Prohibition III.D cannot be determined until  
further data is gathered and analyzed.

1 in Section I.D of Attachment D require the Petitioner to properly operate and maintain its facilities  
2 in accordance with 40 C.F.R § 122.41(e).

3 **B. Discharge Prohibition III.D Violates Substantive Due Process**

4 Discharge Prohibition III.D violates substantive due process because it is a vague narrative  
5 provision. A permit provision is unconstitutionally vague if it does not “sufficiently convey the  
6 proscribed conduct when measured by common understanding and practices,” (*U.S. v.*  
7 *Christopher*, 700 F.2d 1253, 1258 (9<sup>th</sup> Cir. 1983.)), or if it encourages arbitrary and discriminatory  
8 enforcement. (*Kolender v. Lawson*, 461 U.S. 352 (1983); *People ex. rel. Gallo v. Acuna*, 14  
9 Cal.4<sup>th</sup> 1090 (1997).)

10 Discharge Prohibition III.D merely provides that Petitioner must not “cause or contribute  
11 to discharges from EBMUD’s Wet Weather Facilities that occur during wet weather or are  
12 associated with wet weather.” The permit does not define “cause or contribute,” nor does it  
13 provide Petitioner with any other means of knowing how to control the operation of its collection  
14 system during wet weather to comply with Discharge Prohibition III.D. Accordingly, Discharge  
15 Prohibition III.D. does not sufficiently convey the proscribed conduct as required by due process.

16 Moreover, the Permit does not contain any standards for determining compliance with  
17 Discharge Prohibition III.D, and therefore encourages arbitrary enforcement in violation of due  
18 process. (*Kolender v. Lawson*, 461 U.S. at 358-62 (holding that statute was unconstitutionally  
19 vague because it contains no standard for determining what a person must do to comply with the  
20 requirements of the statute and vests virtually complete discretion in the hands of the police to  
21 determine compliance).)

22 Furthermore, Discharge Prohibition III.D violates due process because it potentially makes  
23 the Petitioner strictly liable for the actions of third parties over which it has no control, such as  
24 EBMUD’s operation of the Wet Weather Facilities and the amount of flow contributed by other  
25 Satellites.

26 **C. Discharge Prohibition III.D Exceeds the Scope of the Clean Water Act**

27 The Permit’s Discharge Prohibition III.D (the “cause or contribute” prohibition) does not  
28 regulate discharges to navigable “waters of the United States,” which is all that the Clean Water

1 Act regulates. Here, by its terms, which terms the regulating agencies have stated in testimony  
2 that they will later be tightening, Prohibition III.D proscribes flows from the Petitioner's and the  
3 other Satellites' collection systems to a **treatment entity** only. This is not a regulation of a  
4 discharge to a water of the United States. A permit term that does not regulate discharges to  
5 waters of the United States is invalid because it is beyond Congress' authority under Article III of  
6 the Constitution.

7 **D. The Regional Board Failed to Consider Factors in Water Code Section**  
8 **13241**

9 The Permit is invalid because it does not demonstrate that the Regional Board considered  
10 the factors in Water Code Section 13241. When issuing waste discharge requirements to a  
11 permittee under the Clean Water Act that impose requirements more stringent than those required  
12 by the Clean Water Act, the Regional Board must consider all of the factors set forth in Water  
13 Code Section 13241, including economic considerations. (Wat. Code § 13263, subd. (a); *City of*  
14 *Burbank v. State Water Resources Control Board*, 25 Cal.4<sup>th</sup> 613, 627 (2005).)

15 The Permit imposes requirements more stringent than those imposed by the Clean Water  
16 Act. The Permit prohibits discharges to EBMUD's interceptor that cause or contribute to  
17 discharges from EBMUD's Wet Weather Facilities, requires the control of I&I and requires the  
18 preparation of a Sewer System Management Plan while the Clean Water Act does not. The  
19 addition of these more stringent requirements to the Permit requires the Regional Board to comply  
20 with Water Code Section 13241. The Regional Board did not do so.

21 **E. The Permit Impermissibly Specifies the Manner of Compliance in**  
22 **Violation of Water Code Section 13360**

23 Water Code Section 13360 prohibits the Regional Board from specifying the manner in  
24 which a permittee achieves compliance with waste discharge requirements and explicitly  
25 authorizes a permittee to comply in any lawful manner. Section IV.B.2 of the Permit violates  
26 Section 13360 by specifying that the Petitioner must achieve compliance with Discharge  
27 Prohibition III.D by controlling I&I. The Permit is therefore invalid because it does not permit the  
28 Petitioner to comply with the discharge prohibitions in any lawful manner, including by

1 constructing additional capacity in its collection system, or by having EBMUD increase capacity  
2 in its treatment and Wet Weather Facilities.

3 **F. The Petitioner's Collection System Does Not Require an NPDES Permit**

4 Because the Petitioner does not discharge pollutants to a water of the United States from a  
5 point source, the Regional Board does not have the authority to require an NPDES permit. In  
6 response to the Satellites' comments on this issue, the Regional Board asserts that an NPDES  
7 permit is appropriate because sanitary sewer overflows ("SSOs") occur in the Satellites' collection  
8 systems which discharge to surface waters and the Satellites' collection systems fall within the  
9 definition of a "publicly owned treatment works" ("POTW"). (Response to Comments, p. 17.)  
10 Neither of these arguments provide the Regional Board with a sufficient legal basis for regulating  
11 Petitioner's collection system under an NPDES permit.

12 **1. Potential SSOs do not Justify Issuance of an NPDES Permit**

13 Potential discharges from the Petitioner's collection system in the form of SSOs do not  
14 provide the Regional Board with authority to regulate the Petitioner's collection system under an  
15 NPDES permit. The Clean Water Act authorizes the Regional Board to issue NPDES permits to  
16 "regulate and control only *actual* discharges-not potential discharges, and certainly not point  
17 sources themselves." (*Waterkeeper Alliance, Inc. v. U.S.* 399 F.3d 486, 505 (2<sup>nd</sup> Cir. 2005).)  
18 Accordingly, unless there is an actual addition of any pollutant to navigable waters from  
19 Petitioner's collection system, "there is no point source discharge, no statutory violation, no  
20 statutory obligation...to comply with EPA regulations for point source discharges, and no  
21 statutory obligation...to seek or obtain an NDPEs permit in the first instance." (*Ibid.*)

22 Indeed, the State Board has recognized its inability to regulate collection systems under an  
23 NPDES permit based on potential SSOs. In adopting Order No. 2006-003, Statewide General  
24 Waste Discharge Requirements for Sanitary Sewer Systems, the State Board considered comments  
25 from stakeholders suggesting that NPDES permits should be required for all collection systems  
26 because they have the potential to overflow to surface waters. The State Board rejected this  
27 approach, stating that *Waterkeeper Alliance* has "called into question the states' and USEPA's  
28 ability to regulate discharges that are only 'potential' under an NPDES permit." (Fact Sheet for

1 Order No. 2006-003, p. 4.)

2                   **2.     Petitioner's Collection System does not Fall Within the Definition of a**  
3                   **POTW**

4           While the definition of treatment works in Section 212 of the Clean Water Act is defined  
5 broadly to include sewage collection systems, that definition only applies to the federal grant  
6 program in Subchapter II of the Clean Water Act. For purposes of NPDES permitting  
7 requirements under Subchapter III of the Clean Water Act, EPA's narrower definition of POTW  
8 set forth in 40 C.F.R. § 122.2 applies. (*Montgomery Environmental Coalition v. Costle*, 646 F.2d  
9 568, 590 (D.C. Cir. 1980). Under that section, a POTW is limited to a "municipality...which has  
10 jurisdiction over the Indirect Discharges to and the discharges from such a treatment works." (40  
11 C.F.R. §§ 122.2, 403.3(q).) Thus, because Petitioner does not have jurisdiction over the indirect  
12 discharges to, or the discharges from, EBMUD's wastewater treatment facility, Petitioner's  
13 collection system does not constitute a POTW and is not subject to NDPEs permitting  
14 requirements.

15           In adopting Order No. 2006-003, Statewide General Waste Discharge Requirements for  
16 Sanitary Sewer Systems, the State Board acknowledged that satellite collection systems fall  
17 outside the scope of EPA's definition of POTW. The State Board had considered comments from  
18 stakeholders suggesting that NPDES permits should be required for all collection systems leading  
19 to an NPDES-permitted publicly owned treatment works based on EPA's definition of POTW.  
20 However, the State Board rejected this approach noting that "this interpretation is not widely  
21 accepted and US EPA has no official guidance to this [effect]." (Fact Sheet for Order No. 2006-  
22 003, p. 4.) In addition, the State Board recognized that only the portion of the sanitary sewer  
23 system that is owned by the same agency that owns the permitted wastewater treatment facility is  
24 subject to NPDES permit requirements. (*Ibid.*)

25                   **G.     State Board Order No. WQ 2007-004 Was Erroneously Decided**

26           The Permit is invalid because it is based on Order No. WQ 2007-04, which was  
27  
28



1 erroneously decided by the State Board.<sup>3</sup> The 2007 Order concluded that the permit and time  
2 schedule order issued to EBMUD by the Regional Board in September 2005, which permitted  
3 EBMUD to use its Wet Weather Facilities, were invalid because they failed to implement  
4 ~~secondary treatment requirements and to ensure compliance with applicable water quality~~  
5 standards. As discussed in EBMUD's Petition for Review of Waste Discharge Requirements  
6 Order No. R2-2009-0004 and Cease and Desist Order No. R2-2009-005, Petition A-1996  
7 ("EBMUD Petition"), the State Board's conclusions in the 2007 Order were erroneous because  
8 secondary treatment standards do not apply to facilities that discharge intermittently during wet  
9 weather. In addition, the Wet Weather Facilities are not subject to secondary treatment standards  
10 because they do not fall within the definition of a "publicly owned treatment works."

11 The Petitioner agrees with and incorporates by reference the arguments made in EBMUD's  
12 Petition regarding the validity of the 2007 Order. Accordingly, to the extent that the State Board  
13 erroneously determined that the Wet Weather Facilities are subject to secondary treatment  
14 standards, the basis for Discharge Prohibition III.D. is invalid.

15 **H. The Regional Board is Barred from Requiring Further and Different**  
16 **Actions than those Set Forth in Previous Orders under the Doctrines of**  
17 **Res Judicata and Estoppel**

18 The Wet Weather Facilities and the Petitioner's improvements under the East Bay  
19 Infiltration/Inflow Correction Program ("ICP") were constructed at the direction of, and with the  
20 consent of, both the Regional Board and EPA. These projects were undertaken to comply with  
21 injunctive provisions of Regional Board orders issued to resolve the agency's claims under the  
22 Clean Water Act and Porter-Cologne regarding wet weather discharges from the Petitioner's  
23 collection systems. These administrative orders are final, and the Regional Board is barred by the  
24 doctrine of res judicata from seeking further relief on the basis of the same claims.

25 \_\_\_\_\_

26 <sup>3</sup> The Petitioner understands that the Regional Board must comply with the State Board's Order  
27 No. WQ-2007-004. Nevertheless, the Petitioner believes Order No. WQ 2007-004 was wrongly  
28 decided and should be reconsidered by the State Board.

1 In addition, because the Petitioner relied on representations from the Regional Board and  
2 EPA demanding construction of the Wet Weather Facilities and the Petitioner's improvements,  
3 and the Regional Board and EPA knew of this reliance, the Regional Board is now estopped from  
4 requiring further and different actions from the Petitioner and the other Satellites. (*In the Matter of*  
5 *the Petition of William G. Kengel*, Order No. WQ 89-20 (Cal.St.Wat.Res.Bd. 1989) (stating that  
6 estoppel applies in administrative proceedings where the party to be estopped is apprised of the  
7 facts and intends that its conduct be acted on while the party seeking to assert estoppel is ignorant  
8 of the true state of facts and relies on the conduct to his injury.)

9 In response to the Petitioner's and the Satellites' comments, the Regional Board asserts  
10 that it is not barred from seeking further relief because the prior orders "were primarily established  
11 to address untreated sanitary sewer overflows" from the Petitioner's collection system and  
12 EBMUD's interceptor system while the Permit addresses "discharges of partially treated  
13 wastewater in violation of the Clean Water Act from EBMUD's Wet Weather Facilities."  
14 (Response to Comments, p. 18.) The Regional Board's response mischaracterizes the purpose of  
15 the prior orders. The prior orders were designed to address all SSOs from Petitioner's and the  
16 other Satellites' collection systems, not just untreated SSOs (Regional Board Order No. 86-17  
17 "This cease and desist order is directed at addressing in a reasonable manner the public health  
18 aspects of direct contact with overflows from the community collection systems"). Moreover, the  
19 solution developed by the Petitioner and the other Satellites to comply with the orders, which was  
20 approved by the Regional Board, was designed to eliminate all SSOs. (Regional Board Order No.  
21 93-134, p. 3. ("The compliance plans dated October 8, 1985, proposed a 20-year plan to  
22 implement the East Bay Infiltration/Inflow Correction Program (ICP) to eliminate wet weather  
23 overflows from the communities' sanitary sewer system.") Accordingly, because the prior orders  
24 were designed to address all wet weather SSOs from the Petitioner's collection system, and the  
25 Petitioner constructed significant improvements to comply with the prior orders, the Regional  
26 Board is now barred from seeking further relief to address wet weather SSOs.

27 **I. The Permit Does not Implement the Basin Plan in Violation of Water**  
28 **Code Section 13263**

1 Water Code Section 13263 requires, among other things, that permits issued by the  
2 Regional Board implement the water quality control plans adopted by the State Board. The Water  
3 Quality Control Plan for the San Francisco Bay Basin ("Basin Plan") permits varying treatment  
4 levels for wet weather flows depending on the beneficial uses to be protected and the recurrence  
5 interval of the wet weather event. For areas, such as Petitioner's service area, where water quality  
6 or aquatic productivity may be limited due to the pollution effects of urbanization, the Basin Plan  
7 requires secondary treatment for flows up to a half-year recurrence interval, requires primary  
8 treatment for flows up to a 5-year recurrence interval, and permits overflows for above five-year  
9 intervals. (Basin Plan, Table 4-6.) The Permit, on the other hand, prohibits all wet weather  
10 discharges from EBMUD's Wet Weather Facilities regardless of the magnitude of the wet weather  
11 event. The Permit is therefore inconsistent with the regulatory strategy for wet weather overflows  
12 set forth in the Basin Plan in violation of Section 13263.

13 The Basin Plan, including its wet weather strategy, has been approved by EPA and is  
14 therefore the "applicable water quality standard" under Clean Water Act Section 1313(c)(3). (33  
15 U.S.C. § 1313(c)(3).) EPA's approval of these Basin Plan provisions in a formal rulemaking by  
16 "determin[ing] that such standard meets the requirements of this chapter [the Clean Water Act],"  
17 (*ibid.*), forecloses any contention that use of the Wet Weather Facilities violates federal law and  
18 forecloses any contention that Discharge Prohibition III.D is required by federal law. Unless and  
19 until a Basin Plan amendment is approved by the State Board, the Office of Administrative Law,  
20 and EPA, the Basin Plan must be implemented.

21 The Regional Board cannot impose limitations more stringent than required by the Basin  
22 Plan, even on a case-by-case basis; without considering the factors listed in Water Code Section  
23 13241 and making sufficient findings. (*In the Matter of the Petition of the City and County of San*  
24 *Francisco, et al.*, Order No. WQ 95-4 (Sept. 21, 1995), p. 13.) As stated in Section 4.D above, the  
25 Regional Board did neither in this case.

## 26 5. THE MANNER IN WHICH THE PETITIONER IS AGGRIEVED

27 The Petitioner is aggrieved as a permit holder subject to the conditions and limitations in  
28 the Permit which may be more stringent or onerous than required or provided for under current

1 law. The Permit and Order also are unsupported by evidence in the record and evidence to be  
2 adduced at a hearing before the State Board. Moreover, Discharge Prohibition III.D is vague,  
3 subject to the actions of third parties over whom Petitioner has no control, and impossible to  
4 comply with by its terms. These inappropriate, improper and unlawful conditions and limitations  
5 will require the Petitioner to expend more money and resources to comply with the Permit than  
6 would have been required if the Permit was comprised of appropriate, proper and lawful  
7 conditions. Because of the severe economic circumstances confronting the Petitioner and the rest  
8 of the state and country, the unnecessary expenditure of money and resources is particularly  
9 harmful.

10 **6. THE SPECIFIC ACTION BY THE STATE OR REGIONAL BOARD**  
11 **REQUESTED**

12 As discussed above, the Petitioner requests that this Petition be held in abeyance. If it  
13 becomes necessary for the Petitioner to pursue its appeal, the Petitioner requests that the State  
14 Board issue an Order:

- 15 • Remanding the Permit to the Regional Board;
- 16 • Requiring the Regional Board to regulate Petitioner's collection system under State  
17 Board Order No. 2006-0003, Statewide General Waste Discharge Requirements for  
18 Sanitary Sewer Systems, or under individual Waste Discharge Requirements under  
19 state law, rather than as an NPDES permit under federal law; and
- 20 • Providing for such other and further relief as is just and proper and as may be  
21 requested by the Petitioner and the other Satellites.

22 Alternatively, the Petitioner requests that the State Board issue an Order:

- 23 • Remanding the Permit to the Regional Board;
- 24 • Requiring the Regional Board to remove or revise Section IV.B.2 of the Permit so  
25 that it no longer impermissibly specifies the manner of compliance;
- 26 • Requiring the Regional Board to remove or revise Discharge Prohibition III.D;
- 27 • Requiring the Regional Board to analyze the cost of compliance in accordance with  
28 Water Code Section 13241;
- Requiring the Regional Board to make sufficient findings; and
- Providing for such other and further relief as is just and proper and as may be  
requested by the Petitioner and the other Satellites.

1           **7.     A STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF**  
2                           **LEGAL ISSUES RAISED IN THIS PETITION**

3           The Petitioner's preliminary statement of points and authorities is set forth in Section 4  
4 above. The Petitioner reserves the right to supplement this statement upon receipt and review of  
5 the administrative record. The Petitioner also requests that it be permitted to submit supplemental  
6 evidence not considered by the Regional Board, including evidence of economic considerations  
7 and weather considerations regarding the Wet Weather Facilities which was not available at the  
8 time of the Regional Board hearing, pursuant to Title 23, California Code of Regulations, Section  
9 2050.6 and Water Code Section 13320(b).

10           **8.     A STATEMENT THAT THE PETITION HAS BEEN SENT TO THE**  
11                           **APPROPRIATE REGIONAL BOARD**

12           A true and correct copy of the Petition was mailed by First Class mail on December 18,  
13 2009, to the Regional Board at the following address:

14           Bruce Wolfe, Executive Officer  
15           California Regional Water Quality Control Board,  
16           San Francisco Region  
17           1515 Clay Street, Suite 1400  
18           Oakland, California 94612

19           **9.     A STATEMENT THAT THE SUBSTANTIVE ISSUES OR OBJECTIONS**  
20                           **RAISED IN THE PETITION WERE RAISED BEFORE THE REGIONAL**  
21                           **BOARD**

22           Because the Petitioner requests that this Petition be held in abeyance by the State Board, in  
23 the event this Petition is made active, the Petitioner will submit as an amendment to this Petition a  
24 statement that the substantive issues and objections raised in this Petition were either raised before  
25 the Regional Board or an explanation of why Petitioner was not required or was unable to raise the  
26 substantive issues and objections before the Regional Board.

27           **10.    REQUEST TO HOLD PETITION IN ABEYANCE**

28           The Petitioner requests that the State Board hold this Petition in abeyance pursuant to Title  
29 23, California Code of Regulations, Section 2050.5, subdivision (d).

1           **11.     REQUEST FOR HEARING**

2           The Petitioner requests that the State Board hold a hearing at which the Petitioner can  
3 present additional evidence to the State Board. Because the Petitioner requests that this Petition  
4 ~~be held in abeyance by the State Board, in the event this Petition is made active, the Petitioner will~~  
5 submit as an amendment to this Petition a statement regarding that additional evidence and a  
6 summary of contentions to be addressed or evidence to be introduced and a showing of why the  
7 contentions or evidence have not been previously or adequately presented, as required under Title  
8 23, California Code of Regulations, Section 2050.6(a), (b).

9  
10 DATED: December 18, 2009

11  
12 By: 

13 George S. Peyton, Jr.  
14 Piedmont City Attorney  
15 Attorney for Petitioner  
16 City of Piedmont  
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**EXHIBIT A**

**PERMIT**

(SEE ATTACHED COPY OF PERMIT ORDER NO. R2-2009-0084 (NPDES NO. CA0038504))

**EXHIBIT A**

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD**

**SAN FRANCISCO BAY REGION**

1515 Clay Street, Suite 1400, Oakland, CA 94612  
510-622-2300 • Fax 510-622-2460  
<http://www.waterboards.ca.gov>

**ORDER NO. R2-2009-0084**

**NPDES NO. CA0038504**

**WASTE DISCHARGE REQUIREMENTS  
FOR THE CITY OF PIEDMONT  
SANITARY SEWER COLLECTION SYSTEM  
ALAMEDA COUNTY**

The following Discharger is subject to waste discharge requirements as set forth in this Order:

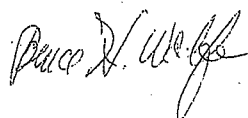
**Table 1. Discharger Information**

<b>Discharger</b>	City of Piedmont
<b>Name of Facility</b>	Sanitary Sewer Collection System
<b>Facility Mailing Address</b>	120 Vista Avenue, Piedmont, CA 94611
The U.S. Environmental Protection Agency (USEPA) and the Regional Water Quality Control Board have classified this Discharger as a minor discharger.	

**Table 2. Administrative Information**

This Order was adopted by the Regional Water Quality Control Board on:	November 18, 2009
This Order shall become effective on:	November 18, 2009
This Order shall expire on:	November 17, 2014
The Discharger shall file a Report of Waste Discharge in accordance with title 23, California Code of Regulations, as application for issuance of new waste discharge requirements no later than:	180 days prior to the Order expiration date

I, Bruce H. Wolfe, Executive Officer, do hereby certify that this Order with all attachments is a full, true, and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region, on the date shown above.



Digitally signed by  
Bruce Wolfe  
Date: 2009.11.18  
17:32:24 -08'00'

Bruce H. Wolfe, Executive Officer



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## I. FACILITY INFORMATION

The following Discharger is subject to waste discharge requirements as set forth in this Order:

**Table 3. Facility Information**

Discharger	City of Piedmont
Name of Facility	Sewer Collection System
Facility Address	Piedmont city limits
	Piedmont, CA
	Alameda County
Facility Contact, Title, and Phone	Lawrence Rosenberg, Director of Public Works (510) 420-3050
Mailing Address	120 Vista Avenue, Piedmont, CA 94611
Type of Facility	Sanitary Sewer Collection System
Facility Design Flow	Not Applicable

## II. FINDINGS

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter Regional Water Board), finds:

**A. Background.** The City of Piedmont (hereinafter Discharger) has been regulated by Order No. R2-2004-0013 and National Pollutant Discharge Elimination System (NPDES) Permit No. CA0038504. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

For the purposes of this Order, references to the "discharger" or "permittee" in applicable federal and State laws, regulations, plans, or policy are held to be equivalent to references to the Discharger herein.

**B. Facility Description.** The Discharger owns and maintains approximately 50 miles of mains in its sanitary sewer (or wastewater) collection system, which serves a population of about 11,000 people in the City of Piedmont. Additionally, the Discharger's wastewater collection system carries wastewater flows originating from sewer mains owned and operated by the City of Oakland.

The Discharger is one of seven "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to the East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the Cities of Alameda, Albany, Berkeley, Emeryville, and Oakland. Wastewaters collected from these East Bay collection systems flow to interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its

treatment facilities and discharges the treated wastewater to San Francisco Bay, under separate NPDES permits (CA0037702 and CA0038440) and Cease and Desist Order No. R2-2009-0005.

***Cease and Desist Orders, EBMUD 2009 NPDES Permit, and Stipulated Order for Preliminary Relief.*** In 1986, the Regional Water Board issued a Cease and Desist Order ("CDO") No. 86-17 (reissued in 1993 as CDO No. 93-134) to the Discharger and each of the Satellite Agencies requiring them to cease and desist discharging from their wastewater collection systems. In response, EBMUD and the Satellite Agencies developed a comprehensive Infiltration/Inflow Correction Program ("I/ICP") that contains schedules, called Compliance Plans, for each Satellite Agency to complete various sewer rehabilitation projects specified in the I/ICP. The Compliance Plans were incorporated into CDO No. 93-134 for each Satellite Agency as a compliance schedule.

In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the U. S. Environmental Protection Agency (USEPA), and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

- C. Legal Authorities.** This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as a NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).
- D. Background and Rationale for Requirements.** The Regional Water Board developed the requirements in this Order based on information submitted as part of the application, and reports required by Order No. R2-2004-0013. The Fact Sheet (Attachment F),

which contains background information and rationale for Order requirements, is hereby incorporated into this Order and constitutes part of the Findings for this Order.

- E. California Environmental Quality Act (CEQA).** Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100-21177.
- F. Technology-based Effluent Limitations.** Section 301(b) of the CWA and implementing USEPA permit regulations at section 122.44, title 40 of the Code of Federal Regulations<sup>1</sup>, require that permits allowing discharges include conditions meeting applicable technology-based requirements at a minimum, and any more stringent effluent limitations necessary to meet applicable water quality standards. Because this Order does not allow any discharges, no such conditions are required.
- G. Water Quality-Based Effluent Limitations.** Section 301(b) of the CWA and section 122.44(d) require that permits allowing discharges include limitations more stringent than applicable federal technology-based requirements where necessary to achieve applicable water quality standards. Because this Order does not allow any discharges, no such limitations are required.
- H. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay Region (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the plan. Because this Order does not allow any discharges, effluent limitations based on the Basin Plan are not required.
- The State Water Board adopted the *Water Quality Control Plan for Control of Temperature in the Coastal and Interstate Water and Enclosed Bays and Estuaries of California* (Thermal Plan) on May 18, 1972, and amended this plan on September 18, 1975. This plan contains temperature objectives for surface waters. Because this Order does not allow any discharges, effluent limitations based on the Thermal Plan are not required.
- I. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants. Because this Order does not allow any discharges, effluent limitations based on the NTR and CTR are not required.
- J. State Implementation Policy.** On March 2, 2000, the State Water Board adopted the Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (State Implementation Policy or SIP). The SIP became effective on April 28, 2000, with respect to the priority pollutant criteria

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<sup>1</sup> All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000, with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005, that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Because this Order does not allow any discharges, effluent limitations based on the SIP are not required.

- K. Compliance Schedules and Interim Requirements.** Section 2.1 of the SIP provides that, based on a discharger's request and demonstration that it is infeasible for an existing discharger to achieve immediate compliance with an effluent limitation derived from a CTR criterion, compliance schedules may be allowed in an NPDES permit. Unless an exception has been granted under section 5.3 of the SIP, a compliance schedule may not exceed 5 years from the date that the permit is issued or reissued, nor may it extend beyond 10 years from the effective date of the SIP (or May 18, 2010) to establish and comply with CTR criterion-based effluent limitations. Where a compliance schedule for a final effluent limitation exceeds 1 year, the Order must include interim numeric limitations for that constituent or parameter. Where allowed by the Basin Plan, compliance schedules and interim effluent limitations or discharge specifications may also be granted to allow time to implement a new or revised water quality objective. This Order does not include compliance schedules, interim effluent limitations or discharge specifications.
- L. Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes. (40 C.F.R. § 131.21; 65 Fed. Reg. 24641 (April 27, 2000).) Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000, may be used for CWA purposes, whether or not approved by USEPA.
- M. Stringency of Requirements for Individual Pollutants.** Because this Order does not allow any discharges, it is the most stringent possible order for all individual pollutants.
- N. Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that the existing quality of waters be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and State Water Board Resolution No. 68-16.

- O. Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and section 122.44(l), title 40 of the Code of Federal Regulations, prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations in a reissued permit to be as stringent as those in the previous permit, with some exceptions where limitations may be relaxed. Because this Order prohibits all discharges from the wastewater collection system, there are no effluent limitations in this Order, and this Order is as stringent as the previous permit. The Regional Water Board intends to refine the narrative Prohibition III.D with a numeric flow limit or other more detailed set of standards that achieves the same result as the Prohibition when information necessary to develop the limit becomes available. Accordingly, such future refinement of the effluent limitation is an equivalent effluent limitation and will not be considered to be less stringent than the existing Prohibition III.D.
- P. Endangered Species Act.** This Order does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). By prohibiting all discharges from the wastewater collection system, this Order protects the beneficial uses of waters of the State. The Discharger is responsible for meeting all requirements of the applicable Endangered Species Act.
- Q. Monitoring and Reporting.** Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below), the Discharger must still notify the Regional Water Board and submit a written report if discharges occur.
- R. Standard and Special Provisions.** Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account that discharges from its wastewater collection system are prohibited.
- S. Notification of Interested Parties.** The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe Waste Discharge Requirements for the discharge and has provided it with an opportunity to submit its written comments and recommendations. Details of the notification are provided in the Fact Sheet of this Order.
- T. Consideration of Public Comment.** The Regional Water Board, in a public meeting, heard and considered all comments pertaining to the discharge. Details of the Public Hearing are provided in the Fact Sheet of this Order.

THEREFORE, IT IS HEREBY ORDERED, that Order No. R2-2004-0013 is rescinded upon the effective date of this Order except for enforcement purposes, and, in order to meet the

provisions contained in division 7 of the Water Code (commencing with section 13000) and regulations adopted thereunder, and the provisions of the federal Clean Water Act (CWA) and regulations and guidelines adopted thereunder, the Discharger shall comply with the requirements in this Order.

### III. DISCHARGE PROHIBITIONS

- A. The discharge of untreated or partially treated wastewater to waters of the United States, is prohibited.
- B. The discharge of untreated or partially treated wastewater that creates a nuisance as defined in California Water Code Section 13050(m) is prohibited.
- C. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.
- D. The Discharger shall not cause or contribute to discharges from EBMUD's Wet Weather Facilities that occur during wet weather or that are associated with wet weather.

### IV. PROVISIONS

#### A. Standard Provisions

- 1. **Federal Standard Provisions.** The Discharger shall comply with all Standard Provisions included in Attachment D of this Order that are applicable.

#### B. Special Provisions

- 1. **Enforcement of Prohibition III.A.** The Regional Water Board may take enforcement action against the Discharger for any sanitary sewer system discharge, unless the Discharger documents that an upset, defined in Attachment D, Standard Provisions I.H, occurred.
- 2. **Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements.** The Discharger shall properly operate and maintain its collection system, which includes but is not limited to controlling inflow and infiltration, (Attachment D, Standard Provisions – Permit Compliance, subsection I.D), report any noncompliance with the exception noted below, and mitigate any discharge from the collection system in violation of this Order (Attachment D, Standard Provisions – Permit Compliance, subsection I.C).

The General Waste Discharge Requirements for Collection System Agencies (General Collection System WDR) Order No. 2006-0003-DWQ has requirements for operation and maintenance of wastewater collection systems and for reporting and mitigating sanitary sewer overflows. While the Discharger must comply with both the General Collection System WDR and this Order, the General Collection System WDR specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows. Implementation of the General Collection System WDR requirements for proper operation and maintenance and

mitigation of spills will satisfy the corresponding federal NPDES requirements specified in this Order provided the Discharger reduces peak wet weather flows so that it does not cause or contribute to discharges at EBMUD's Wet Weather Facilities.

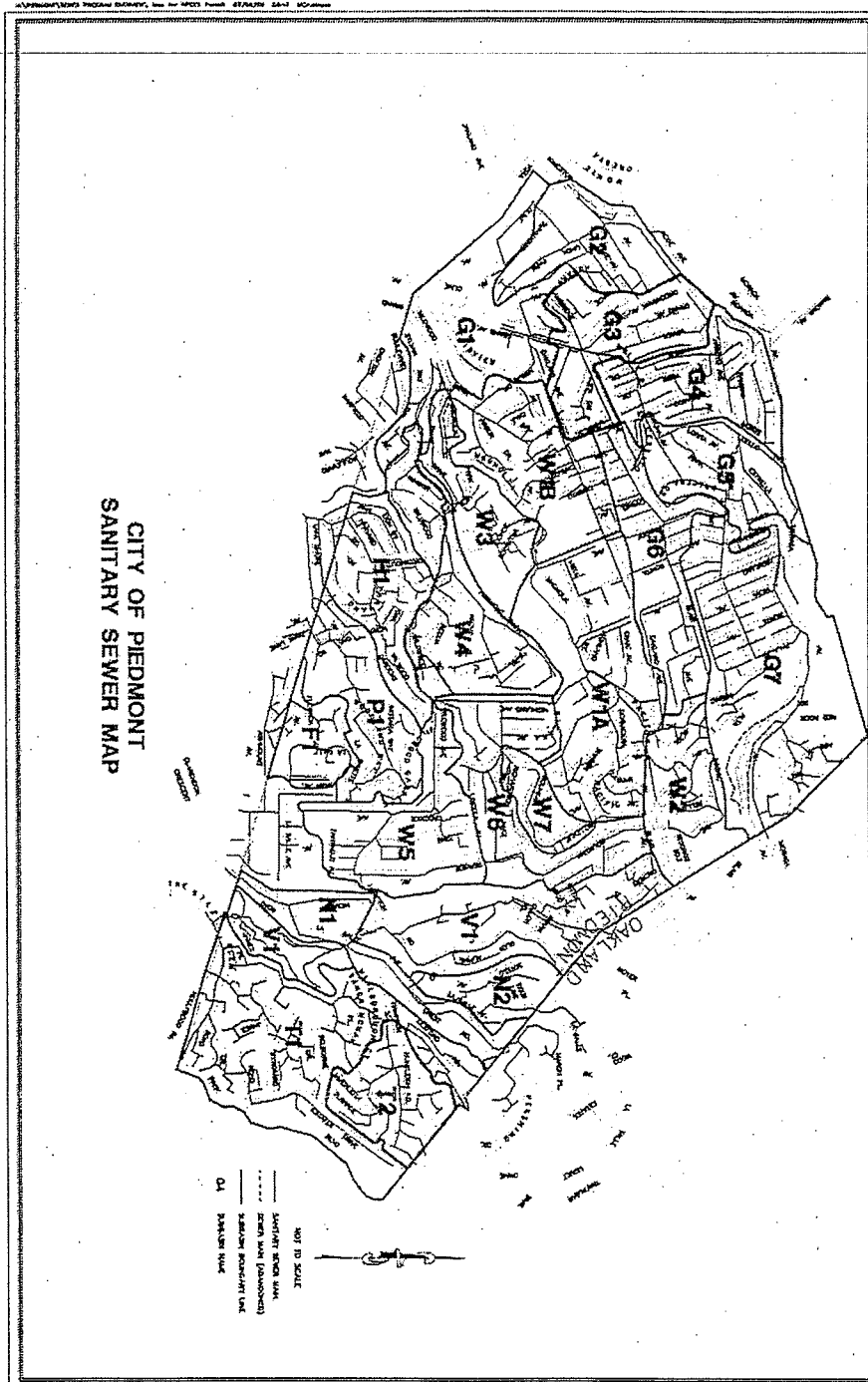
Following reporting requirements in the General Collection System WDR will satisfy NPDES reporting requirements for discharges of untreated or partially treated wastewater from the Discharger's wastewater collection system. Furthermore, Regional Water Board staff issued notification and certification requirements in its letter on May 1, 2008. While not a part of this NPDES permit, the requirements in the May 1, 2008, letter continue to be in effect, and the letter is included in Attachment G for reference.

*Exception to noncompliance reporting.* This Order does not require that the Discharger report noncompliance with Prohibition III.D. EBMUD's NPDES Permit CA0038440 requires EBMUD to report such discharges from its Wet Weather Facilities so reporting by the Discharger is not necessary.

**ATTACHMENT A – NOT USED**



## ATTACHMENT B – COLLECTION SYSTEM SERVICE AREA



## **ATTACHMENT D – STANDARD PROVISIONS (FEDERAL)**

### **I. STANDARD PROVISIONS – PERMIT COMPLIANCE**

#### **A. Duty to Comply**

1. The Discharger must comply with all of the conditions of this Order. Any noncompliance constitutes a violation of the Clean Water Act (CWA) and the California Water Code and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. (40 C.F.R. § 122.41(a).)
2. The Discharger shall comply with effluent standards or prohibitions established under Section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions, even if this Order has not yet been modified to incorporate the requirement. (40 C.F.R. § 122.41(a)(1).)

#### **B. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a Discharger in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Order. (40 C.F.R. § 122.41(c).)

#### **C. Duty to Mitigate**

The Discharger shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this Order that has a reasonable likelihood of adversely affecting human health or the environment. (40 C.F.R. § 122.41(d).)

#### **D. Proper Operation and Maintenance**

The Discharger shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the Discharger to achieve compliance with the conditions of this Order. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by a Discharger only when necessary to achieve compliance with the conditions of this Order. (40 C.F.R. § 122.41(e).)

#### **E. Property Rights**

1. This Order does not convey any property rights of any sort or any exclusive privileges. (40 C.F.R. § 122.41(g).)

2. The issuance of this Order does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations. (40 C.F.R. § 122.5(c).)

#### **F. Inspection and Entry**

The Discharger shall allow the Regional Water Board, State Water Board, United States Environmental Protection Agency (USEPA), and/or their authorized representatives (including an authorized contractor acting as their representative), upon the presentation of credentials and other documents, as may be required by law, to (40 C.F.R. § 122.41(i); Wat. Code, § 13383):

1. Enter upon the Discharger's premises where a regulated facility or activity is located or conducted, or where records are kept under the conditions of this Order (40 C.F.R. § 122.41(i)(1));
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Order (40 C.F.R. § 122.41(i)(2));
3. Inspect and photograph, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Order (40 C.F.R. § 122.41(i)(3)); and
4. Sample or monitor, at reasonable times, for the purposes of assuring Order compliance or as otherwise authorized by the CWA or the Water Code, any substances or parameters at any location. (40 C.F.R. § 122.41(i)(4).)

#### **G. Bypass**

##### **1. Definitions**

- a. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. (40 C.F.R. § 122.41(m)(1)(i).)
- b. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production. (40 C.F.R. § 122.41(m)(1)(ii).)

2. Bypass not exceeding limitations. The Discharger may allow any bypass to occur which does not cause exceedances of effluent limitations, but only if it is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions listed in Standard Provisions – Permit Compliance I.G.3, I.G.4, and I.G.5 below. (40 C.F.R. § 122.41(m)(2).)

3. Prohibition of bypass. Bypass is prohibited, and the Regional Water Board may take enforcement action against a Discharger for bypass, unless (40 C.F.R. § 122.41(m)(4)(i)):
  - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage (40 C.F.R. § 122.41(m)(4)(i)(A));
  - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance (40 C.F.R. § 122.41(m)(4)(i)(B)); and
  - c. The Discharger submitted notice to the Regional Water Board as required under Standard Provisions – Permit Compliance I.G.5 below. (40 C.F.R. § 122.41(m)(4)(i)(C).)
4. The Regional Water Board may approve an anticipated bypass, after considering its adverse effects, if the Regional Water Board determines that it will meet the three conditions listed in Standard Provisions – Permit Compliance I.G.3 above. (40 C.F.R. § 122.41(m)(4)(ii).)
5. Notice
  - a. Anticipated bypass. If the Discharger knows in advance of the need for a bypass, it shall submit a notice, if possible at least 10 days before the date of the bypass. (40 C.F.R. § 122.41(m)(3)(i).)
  - b. Unanticipated bypass. The Discharger shall submit notice of an unanticipated bypass as required in Standard Provisions - Reporting V.E below (24-hour notice). (40 C.F.R. § 122.41(m)(3)(ii).)

#### H. Upset

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the Discharger. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. (40 C.F.R. § 122.41(n)(1).)

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of Standard Provisions – Permit Compliance I.H.2 below are met. No determination made during administrative review of claims that noncompliance was

caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review. (40 C.F.R. § 122.41(n)(2).)

2. Conditions necessary for a demonstration of upset. A Discharger who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that (40 C.F.R. § 122.41(n)(3)):
  - a. An upset occurred and that the Discharger can identify the cause(s) of the upset (40 C.F.R. § 122.41(n)(3)(i));
  - b. The permitted facility was, at the time, being properly operated (40 C.F.R. § 122.41(n)(3)(ii));
  - c. The Discharger submitted notice of the upset as required in Standard Provisions – Reporting V.E.2.b below (24-hour notice) (40 C.F.R. § 122.41(n)(3)(iii)); and
  - d. The Discharger complied with any remedial measures required under Standard Provisions – Permit Compliance I.C above. (40 C.F.R. § 122.41(n)(3)(iv).)
3. Burden of proof. In any enforcement proceeding, the Discharger seeking to establish the occurrence of an upset has the burden of proof. (40 C.F.R. § 122.41(n)(4).)

## **II. STANDARD PROVISIONS – PERMIT ACTION**

### **A. General**

This Order may be modified, revoked and reissued, or terminated for cause. The filing of a request by the Discharger for modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any Order condition. (40 C.F.R. § 122.41(f).)

### **B. Duty to Reapply**

If the Discharger wishes to continue an activity regulated by this Order after the expiration date of this Order, the Discharger must apply for and obtain a new permit. (40 C.F.R. § 122.41(b).)

### **C. Transfers**

This Order is not transferable to any person except after notice to the Regional Water Board. The Regional Water Board may require modification or revocation and reissuance of the Order to change the name of the Discharger and incorporate such other requirements as may be necessary under the CWA and the Water Code. (40 C.F.R. § 122.41(l)(3); § 122.61.)

### III. STANDARD PROVISIONS – MONITORING

- A. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (40 C.F.R. § 122.41(j)(1).)
- B. Monitoring results must be conducted according to test procedures under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503 unless other test procedures have been specified in this Order. (40 C.F.R. § 122.41(j)(4); § 122.44(i)(1)(iv).)

### IV. STANDARD PROVISIONS – RECORDS

- A. Except for records of monitoring information required by this Order related to the Discharger's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by Part 503), the Discharger shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this Order, and records of all data used to complete the application for this Order, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Regional Water Board Executive Officer at any time. (40 C.F.R. § 122.41(j)(2).)
- B. Records of monitoring information shall include:
  - 1. The date, exact place, and time of sampling or measurements (40 C.F.R. § 122.41(j)(3)(i));
  - 2. The individual(s) who performed the sampling or measurements (40 C.F.R. § 122.41(j)(3)(ii));
  - 3. The date(s) analyses were performed (40 C.F.R. § 122.41(j)(3)(iii));
  - 4. The individual(s) who performed the analyses (40 C.F.R. § 122.41(j)(3)(iv));
  - 5. The analytical techniques or methods used (40 C.F.R. § 122.41(j)(3)(v)); and
  - 6. The results of such analyses. (40 C.F.R. § 122.41(j)(3)(vi).)
- C. Claims of confidentiality for the following information will be denied (40 C.F.R. § 122.7(b)):
  - 1. The name and address of any permit applicant or Discharger (40 C.F.R. § 122.7(b)(1)); and
  - 2. Permit applications and attachments, permits and effluent data. (40 C.F.R. § 122.7(b)(2).)

## **V. STANDARD PROVISIONS – REPORTING**

### **A. Duty to Provide Information**

The Discharger shall furnish to the Regional Water Board, State Water Board, or USEPA within a reasonable time, any information which the Regional Water Board, State Water Board, or USEPA may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this Order or to determine compliance with this Order. Upon request, the Discharger shall also furnish to the Regional Water Board, State Water Board, or USEPA copies of records required to be kept by this Order. (40 C.F.R. § 122.41(h); Wat. Code, § 13267.)

### **B. Signatory and Certification Requirements**

1. All applications, reports, or information submitted to the Regional Water Board, State Water Board, and/or USEPA shall be signed and certified in accordance with Standard Provisions – Reporting V.B.2, V.B.3, V.B.4, and V.B.5 below. (40 C.F.R. § 122.41(k).)
2. All permit applications shall be signed by either a principal executive officer or ranking elected official. For purposes of this provision, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of USEPA). (40 C.F.R. § 122.22(a)(3).)
3. All reports required by this Order and other information requested by the Regional Water Board, State Water Board, or USEPA shall be signed by a person described in Standard Provisions – Reporting V.B.2 above, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
  - a. The authorization is made in writing by a person described in Standard Provisions – Reporting V.B.2 above (40 C.F.R. § 122.22(b)(1));
  - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) (40 C.F.R. § 122.22(b)(2)); and
  - c. The written authorization is submitted to the Regional Water Board and State Water Board. (40 C.F.R. § 122.22(b)(3).)
4. If an authorization under Standard Provisions – Reporting V.B.3 above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Standard

Provisions – Reporting V.B.3 above must be submitted to the Regional Water Board and State Water Board prior to or together with any reports, information, or applications, to be signed by an authorized representative. (40 C.F.R. § 122.22(c).)

5. Any person signing a document under Standard Provisions – Reporting V.B.2 or V.B.3 above shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations." (40 C.F.R. § 122.22(d).)

### **C. Monitoring Reports**

1. Monitoring results shall be reported at the intervals specified in the Monitoring and Reporting Program (Attachment E) in this Order. (40 C.F.R. § 122.22(l)(4).)
2. Monitoring results must be reported on a Discharge Monitoring Report (DMR) form or forms provided or specified by the Regional Water Board or State Water Board for reporting results of monitoring of sludge use or disposal practices. (40 C.F.R. § 122.41(l)(4)(i).)
3. If the Discharger monitors any pollutant more frequently than required by this Order using test procedures approved under Part 136 or, in the case of sludge use or disposal, approved under Part 136 unless otherwise specified in Part 503, or as specified in this Order, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Regional Water Board. (40 C.F.R. § 122.41(l)(4)(ii).)
4. Calculations for all limitations, which require averaging of measurements, shall utilize an arithmetic mean unless otherwise specified in this Order. (40 C.F.R. § 122.41(l)(4)(iii).)

### **D. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Order, shall be submitted no later than 14 days following each schedule date. (40 C.F.R. § 122.41(l)(5).)

### **E. Twenty-Four Hour Reporting**

1. The Discharger shall report any noncompliance that may endanger health or the environment. Any information shall be provided orally within 24 hours from the time



the Discharger becomes aware of the circumstances. A written submission shall also be provided within five (5) days of the time the Discharger becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. (40 C.F.R. § 122.41(l)(6)(i).)

2. The following shall be included as information that must be reported within 24 hours under this paragraph (40 C.F.R. § 122.41(l)(6)(ii)):
  - a. Any unanticipated bypass that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(A).)
  - b. Any upset that exceeds any effluent limitation in this Order. (40 C.F.R. § 122.41(l)(6)(ii)(B).)
3. The Regional Water Board may waive the above-required written report under this provision on a case-by-case basis if an oral report has been received within 24 hours. (40 C.F.R. § 122.41(l)(6)(iii).)

#### **F. Planned Changes**

The Discharger shall give notice to the Regional Water Board as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required under this provision only when (40 C.F.R. § 122.41(l)(1)):

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b) (40 C.F.R. § 122.41(l)(1)(i)); or
2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this Order. (40 C.F.R. § 122.41(l)(1)(ii).)

The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in this Order nor to notification requirements under section 122.42(a)(1) (see Additional Provisions—Notification Levels VII.A.1). (40 C.F.R. § 122.41(l)(1)(ii).)

#### **G. Anticipated Noncompliance**

The Discharger shall give advance notice to the Regional Water Board or State Water Board of any planned changes in the permitted facility or activity that may result in noncompliance with General Order requirements. (40 C.F.R. § 122.41(l)(2).)

#### **H. Other Noncompliance**

The Discharger shall report all instances of noncompliance not reported under Standard Provisions – Reporting V.C, V.D, and V.E above at the time monitoring reports are submitted. The reports shall contain the information listed in Standard Provision – Reporting V.E above. (40 C.F.R. § 122.41(l)(7).)

#### **I. Other Information**

When the Discharger becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Regional Water Board, State Water Board, or USEPA, the Discharger shall promptly submit such facts or information. (40 C.F.R. § 122.41(l)(8).)

### **VI. STANDARD PROVISIONS – ENFORCEMENT**

- A. The Regional Water Board is authorized to enforce the terms of this permit under several provisions of the Water Code, including, but not limited to, sections 13385, 13386, and 13387.

### **VII. ADDITIONAL PROVISIONS – NOTIFICATION LEVELS**

#### **A. Publicly-Owned Treatment Works (POTWs)**

All POTWs shall provide adequate notice to the Regional Water Board of the following (40 C.F.R. § 122.42(b)):

1. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to sections 301 or 306 of the CWA if it were directly discharging those pollutants (40 C.F.R. § 122.42(b)(1)); and
2. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of adoption of the Order. (40 C.F.R. § 122.42(b)(2).)
3. Adequate notice shall include information on the quality and quantity of effluent introduced into the POTW as well as any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. (40 C.F.R. § 122.42(b)(3).)

## ATTACHMENT F – FACT SHEET

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## ATTACHMENT F-- FACT SHEET

As described in section II of this Order, this Fact Sheet includes the legal requirements and technical rationale that serve as the basis for the requirements of this Order.

This Order has been prepared under a standardized format to accommodate a broad range of discharge requirements for dischargers in California. Only those sections or subsections of this Order that are specifically identified as "not applicable" have been determined not to apply to this Discharger. Sections or subsections of this Order not specifically identified as "not applicable" are fully applicable to this Discharger.

### I. PERMIT INFORMATION

The following table summarizes administrative information related to the facility.

**Table F-1. Facility Information**

WDID	2 019184001
Discharger	City of Piedmont
Name of Facility	Sewer Collection System
Facility Address	Piedmont city limits
	Piedmont, CA
	Alameda County
Facility Contact, Title, and Phone	Lawrence Rosenberg, Director of Public Works (510) 420-3050
Authorized Person to Sign and Submit Reports	Same
Mailing Address	120 Vista Avenue Piedmont, CA 94611
Billing Address	Same
Type of Facility	Sewer Collection System
Major or Minor Facility	Minor
Threat to Water Quality	2
Complexity	B
Pretreatment Program	N
Reclamation Requirements	Not Applicable
Facility Permitted Flow	0 gallons per day
Facility Design Flow	Not Applicable
Watershed	San Francisco Bay
Receiving Water	Various
Receiving Water Type	enclosed bay

- A. The City of Piedmont (hereinafter Discharger) owns and maintains approximately 50 miles of wastewater collection systems that serve a population of about 11,000 people in the City of Piedmont. Additionally, the Discharger's wastewater

collection system carries wastewater flows originating from sewer mains owned and operated by the City of Oakland.

The Discharger is one of seven East Bay Communities or "Satellite Agencies" that operates wastewater collection systems in the East Bay that route sewage to East Bay Municipal Utility District's (EBMUD) wastewater treatment facilities. The other six Satellite Agencies include Stege Sanitary District and the Cities of Alameda, Albany, Berkeley, Emeryville, and Oakland. Wastewaters collected from the East Bay Communities' collection systems flow to interceptors owned and operated by EBMUD. EBMUD treats the wastewater at its treatment facilities and discharges the treated wastewater to San Francisco Bay, under a separate NPDES permit (CA0037702).

- B.** The Discharger's sewer collection system has been regulated by Order No. R2-2004-0013, which was adopted on March 17, 2004, and expired on March 16, 2009. The Discharger is also regulated by State Water Board Order No. 2006-0003-DWQ Statewide General Waste Discharge Requirements for Sanitary Sewer Systems.

## **II. FACILITY DESCRIPTION**

### **A. Description of Sewer Collection System**

The Discharger owns and operates about 50 miles of wastewater collection systems in the City of Piedmont in Alameda County. The sewer collection system transports wastewater from commercial and residential sources to EBMUD's wastewater interceptor system, which conveys flow from multiple agencies to the main Wastewater Treatment Plant where EBMUD treats the wastewater and discharges it to San Francisco Bay. Additionally, the Discharger's wastewater collection system carries wastewater flows originating from sewer mains owned and operated by the City of Oakland. During wet weather, because of increased flows caused by inflow and infiltration (I&I) from collection systems tributary to EBMUD facilities, the wastewater also flows to EBMUD's Wet Weather Facilities where EBMUD stores the wastewater or partially treats it prior to discharge to San Francisco Bay.

### **B. Discharge Points and Receiving Waters**

This Order prohibits discharges from the Discharger's sewer collection system so there are no authorized discharge points.

### **C. Summary of Existing Requirements**

The previous permit prohibited discharge with the following requirements:

1. The discharge of untreated or partially treated wastewater to any surface water stream, natural or man-made, or to any drainage system intended to convey storm water runoff to surface waters, is prohibited.
2. The discharge of chlorine, or any other toxic substance used for disinfection and cleanup of wastewater spills, to any surface water body is prohibited.

At B.1 (Implementation and Enforcement of Prohibition A.1), the previous permit noted that prohibition 1 is not violated (a) if the sewer system discharge does not enter a storm drain or surface water body, or (b) if the Discharger contains the sewer system discharge within the storm drain system pipes, and fully recovers and cleans up the spilled wastewater.

### **D. Compliance Summary**

For 2007 and 2008, Table F-2 below summarizes the estimated number of sewer system discharges from the Discharger's collection system and the primary causes of these discharges. This information is not necessarily indicative of ongoing causes, in part because there are often multiple causes for any one particular sewer system discharge.

**Table F-2. Sewer System Discharges and Primary Causes**

	2007	2008
Number of Discharges	8	8
% Caused by Roots	37.5	37.5
% Caused by Grease	0	12.5
% Caused by Debris	37.5	25
% Caused by Infrastructure Failure	25	12.5

### **E. Planned Changes**

As required by Cease & Desist Order (CDO) No. 93-134, the Discharger rehabilitated and replaced portions of its collection system. This CDO included a compliance plan with projects that the Discharger had to implement each year. The Discharger completed all of its projects associated with CDO No. 93-134 in 2005. The purpose of these projects was to prevent discharges of untreated or partially treated wastewater from its wastewater collection system. The background and history for these requirements are detailed in the subsections below.

#### ***Background and Regulatory History***

- a. *History.* The wastewater collection systems in the East Bay Communities were originally constructed in the early twentieth century. These systems originally included cross-connections to storm drain systems and, while not uncommon at the time of construction, some of the sewers were later characterized as having inferior materials, poor joints, and inadequate beddings for sewer pipes. The construction of improvements and the growth of landscaping, particularly trees, have damaged sewers and caused leaks. Poor construction techniques and aging sewer pipes resulted in significant I&I during the wet weather season. In the early 1980s, it was noted that during storms, the collection systems might receive up to 20 times more flow than in dry weather. As a result, the East Bay Communities' collection systems might overflow to streets, local watercourses, and the Bay, creating a risk to public health and impairing water quality.
- b. *I&I Effect on EBMUD's Interceptor System.* The East Bay Communities' collection systems are connected to EBMUD's interceptors. In the early 1980s, excessive I&I from the East Bay Communities' collection systems could force EBMUD's interceptors to overflow untreated wastewater at seven designed overflow structures in EBMUD's interceptors along the shoreline of central San Francisco Bay.

- c. *EBMUD wet weather permits.* The Regional Water Board first issued an NPDES permit to EBMUD in 1976 for the wet weather discharges from EBMUD's interceptors. This permit required EBMUD to eliminate the discharge of untreated overflows from its interceptors and to protect water quality in San Francisco Bay. This permit was reissued in 1984, 1987, 1992 and 1998. Additional requirements were incorporated into the reissued permits following construction of wet weather treatment facilities.
- d. *Collection system permits to East Bay Communities.* Following issuance of the wet weather permit to EBMUD in 1976, the Regional Water Board issued similar permits in 1976 to all members of the East Bay Communities except the City of Emeryville. The Regional Water Board reissued these permits in 1984, 1989 and 1994. Emeryville was not originally issued a permit because it was believed that no wet weather overflows occurred in Emeryville's service area. However, wet weather overflows were identified in the City of Emeryville after completion of the East Bay I&I Study and issuance of the Cease and Desist Orders (CDO) in 1986.
- e. *East Bay I&I Study and I/ICP.* In response to the requirements in the Regional Water Board permits and CDOs regarding the control of untreated overflows from EBMUD's interceptors and the East Bay Communities' collection systems, EBMUD and the East Bay Communities coordinated their efforts to develop a comprehensive program to comply with these permit requirements. In 1980, the East Bay Communities, including the Discharger, and EBMUD initiated a 6-year East Bay I&I Study. The I&I Study outlined recommendations for a long-range sewer improvement program called the East Bay Infiltration/Inflow Correction Program (I/ICP). The I&I Study also specified schedules, which are called Compliance Plans, for each member of the East Bay Communities to complete various sewer rehabilitation projects specified in the I/ICP. These Compliance Plans were later incorporated into the CDO for East Bay Communities as compliance schedules.

The \$16.5 million I&I Study was funded under the Clean Water Grant Program with State and federal support paying about 87.5% of the costs. The original Compliance Plans dated October 8, 1985, proposed a 20-year plan to implement the I/ICP to eliminate wet weather overflows from the East Bay Communities' collection systems up to the 5-year storm event. The total program cost was estimated at \$304 million in 1985 dollars.

- f. *Joint Powers Agreement (JPA).* In order to address I&I problems in the East Bay Communities' wastewater collection systems, on February 13, 1979, the East Bay Communities and EBMUD entered into a JPA under which EBMUD serves as administrative lead agency to conduct the East Bay I&I Study. The JPA was amended on January 17, 1986, to designate EBMUD as the lead agency during the initial five-year implementation phase of the East Bay I&I Study recommendations. The amended JPA also delegated authority to EBMUD to apply for and administer grant funds, to award contracts for mutually agreed upon wet weather programs, and to perform other related tasks. Programs developed under the JPA are directed by a Technical Advisory Board (TAB) composed of one voting representative from each



of the East Bay Communities and EBMUD. In addition, one non-voting staff member of the Regional Water Board, State Water Board, and USEPA may participate in the TAB.

- g. *Cease and Desist Order (CDO)*. In 1986, the Regional Water Board issued a CDO to the East Bay Communities including the City of Emeryville (Order No. 86-17, reissued with Order No. 93-134). This CDO requires the East Bay Communities to cease and desist discharging from their wastewater collection systems. In CDO No. 86-17, the Regional Water Board accepted the proposed approach in the I/ICP and directed the I/ICP to focus on conducting activities that reduce impacts to public health.
- h. *EBMUD's Wet Weather Program*. From 1975 to 1987, EBMUD underwent its own wet weather program planning, and developed a comprehensive Wet Weather Program. The objective of the Wet Weather Program was that EBMUD's wet weather facilities have the capacity to convey peak flows to EBMUD's system by the East Bay Communities' trunk sewers at the end of the I/ICP implementing period. EBMUD started implementing its Wet Weather Program in 1987. Since then, EBMUD has spent about \$310 million on the wet weather program. This includes construction of three wet weather treatment facilities, and two wet weather interceptors, new storage basins and pumping facilities, expansion of the main wastewater treatment plant, and elimination of two out of the seven designed wet weather overflow structures.
- i. *Updates to original I/ICP*. After receiving a notice from the Regional Water Board for issuing a new CDO in 1993, the East Bay Communities requested the opportunity to revise their Compliance Plans. The impetus of this revision stemmed from increased costs for implementing the original Compliance Plans. New technological developments and the inadequacy of other methods previously thought viable for sewer rehabilitation and relief line installation have increased the cost of the I/ICP from original cost estimates. The revised Compliance Plans incorporated the experience gained from the implementation of I/ICP for the six years from 1987 to 1993 in order to better address the remaining I/ICP projects.
- j. *Extension to Original Compliance Plans*. The increase in project costs necessitated extensions of the schedules in the original Compliance Plans in order to minimize the impact on rate-payers. As a result, all members of the East Bay Communities except the Stege Sanitary District and Emeryville submitted a revised Compliance Plan and Schedule in October 1993. In light of the increased costs, the Regional Water Board granted the Discharger and the Cities of Alameda, Albany, Berkeley, Oakland, and Piedmont a five (5) to ten (10) year extension to the original compliance schedules in the CDO reissuance in October 1993.
- k. *Cost analysis of sewer rehabilitation program*. It is cost prohibitive to eliminate all I&I into a sewer system. The East Bay Communities performed a cost analysis during the I&I Study to determine the cost-effective level of rehabilitation. The cost-effective level of rehabilitation involved balancing the cost of rehabilitation of the

East Bay Communities' sewer systems and the cost for increasing the capacity of EBMUD's interceptors and wastewater treatment facilities. A sensitivity analysis was performed to study cost effects of various levels of rehabilitation on various wet weather alternatives. Cost-Effective Ratios<sup>1</sup> (C-E-Ratio) for various drainage basins were calculated. A C-E Ratio greater than one (1) indicated that I&I rehabilitation is cost effective. The analysis was performed by using a computer program supported by the Corps of Engineers Hydrologic Engineering Center, called STORM. This analysis derived a regional least-cost solution, which involved both East Bay Communities' sewer rehabilitation cost and transportation/treatment cost by EBMUD. The study results were described in the Wet Weather Facilities Update. It was concluded that the most cost effective solution was to rehabilitate the cost effective collection systems and provide relief sewers, interceptor hydraulic capacity, and storage basins to handle wet weather flows up to a 5-year storm event.

- l. *Design goal of I/ICP.* The design goal of East Bay I/ICP was to eliminate overflows from the East Bay Communities' collection systems and EBMUD's interceptor unless the rainfall exceeds a 5-year design storm event. Overflows could continue to occur for events less than the 5-year design storm until the Discharger completed its I/ICP. However, the occurrence of overflows decreased as more of the East Bay I/ICP projects was completed.
- m. *5-year Design Storm Event Definition.* The 5-year design storm event is a storm event that meets the following criteria: a 6-hour duration, and a maximum 1-hour rainfall intensity of a storm with return period of five (5) years. The storm is assumed to occur during saturated soil conditions, and to coincide with the peak 3-hour ultimate Base Wastewater Flow (BWF) condition. BWF consists of domestic wastewater flow from residential, commercial, and institutional sources plus industrial wastewater. BWF specifically excludes I&I from groundwater or storm water. Due to these conservative assumptions, the Wet Weather Facilities Pre-design Report concluded that the estimated peak flow produced by this event had a return period of approximately 13 years. The peak I&I flow from a 5-year storm was selected as the basis of design for the treatment level intended to protect beneficial uses as defined by the San Francisco Bay Basin Plan (Basin Plan), Maintenance Level C. Maintenance Level C requires secondary treatment to the half-year recurrence interval, primary treatment to the 5-year recurrence interval, and above the 5-year interval, overflows are allowed. It should be noted that the State Water Board in 2007 remanded this portion of the Basin Plan in its Order WQ 2007-0004 with direction that the Regional Water Board initiate a Basin Plan amendment to ensure that its regulation of wet weather overflows is consistent with the Clean Water Act.
- n. In 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit and prohibiting any discharge from EBMUD's three Wet Weather Facilities ("WWFs"), located at 2755 Point Isabel Street, Richmond; 225 Fifth Avenue, Oakland; and 5597 Oakport Street, Oakland. Shortly afterwards, the

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<sup>1</sup> C-E Ratio = (East Bay Communities Cost Savings + EBMUD Cost Savings)/(Rehabilitation Cost)

USEPA, and the Regional and State Water Boards filed a Federal Action (lawsuit) against EBMUD for discharges in violation of this prohibition and entered into a Stipulated Order ("SO") based on EBMUD's immediate inability to comply. The SO requires EBMUD, among other things, to conduct flow monitoring on the satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

- o. EBMUD had a number of studies conducted to provide the basis for developing many of the technical provisions of the SO. One conclusion of these studies was that, while the Satellite Agencies had made significant progress in reducing inflow and infiltration ("I/I") through the I/ICP and subsequent sewer pipe rehabilitation, it is unlikely that these projects will be sufficient to reduce flows from the Satellite Agencies to the extent that discharges from the WWFs are eliminated or significantly reduced. The cooperation of each Satellite Agency in the development and implementation of the programs specified above, along with making improvements to their own wastewater collection systems, is critical to achieving the flow reductions within each system that is necessary to eliminate or significantly reduce the discharge from the WWFs.

### ***Progress in Reducing Inflow & Infiltration and Eliminating Overflows***

The East Bay Communities most recent update, dated December 31, 2008, indicates that sewer rehabilitation is 81.1 percent complete. The Communities have completed all of the I&I projects that were designed to eliminate overflow locations identified as high threats to human health and removed all sanitary sewer system bypasses identified in the CDO that diverted wet weather overflows to storm drains. At this time, Stege Sanitary District and the Cities of Alameda, Emeryville, and Piedmont have completed their respective requirements under CDO No. 93-134. The Cities of Albany, Berkeley, and Oakland still have additional rehabilitation work and relief lines to complete. To date, the work under the CDO has also reduced peak wet weather flows from the East Bay Communities to EBMUD's interceptor from about 20 times dry weather flows to just above 10.

## **III. APPLICABLE PLANS, POLICIES, AND REGULATIONS**

The requirements contained in the Order are based on the requirements and authorities described in this section.

### **A. Legal Authorities**

This Order is issued pursuant to section 402 of the federal Clean Water Act (CWA) and implementing regulations adopted by USEPA and chapter 5.5, division 7 of the California Water Code (commencing with section 13370). It shall serve as an NPDES permit for point source discharges from this facility to surface waters. This Order also serves as Waste Discharge Requirements (WDRs) pursuant to article 4, chapter 4, division 7 of the Water Code (commencing with section 13260).

## **B. California Environmental Quality Act (CEQA)**

Under Water Code section 13389, this action to adopt an NPDES permit is exempt from the provisions of CEQA, Public Resources Code sections 21100 through 21177.

## **C. State and Federal Regulations, Policies, and Plans**

- 1. Water Quality Control Plans.** The Regional Water Board adopted a Water Quality Control Plan for the San Francisco Bay (hereinafter Basin Plan) that designates beneficial uses, establishes water quality objectives, and contains implementation programs and policies to achieve those objectives for all waters addressed through the Basin Plan. In addition, the Basin Plan implements State Water Board No. 88-63, which established State policy that all waters, with certain exceptions, should be considered suitable or potentially suitable for municipal or domestic supply.

Common beneficial uses for central and lower San Francisco Bay, as identified in the Basin Plan, are:

- a. Commercial and sport fishing
- b. Estuarine habitat
- c. Industrial service and process supply
- d. Fish migration
- e. Navigation
- f. Preservation of rare and endangered species
- g. Water contact and non-contact recreation
- h. Shellfish harvesting
- i. Fish spawning
- j. Wildlife habitat

Requirements of this Order implement the Basin Plan.

- 2. National Toxics Rule (NTR) and California Toxics Rule (CTR).** USEPA adopted the NTR on December 22, 1992, and later amended it on May 4, 1995 and November 9, 1999. About forty criteria in the NTR applied in California. On May 18, 2000, USEPA adopted the CTR. The CTR promulgated new toxics criteria for California and, in addition, incorporated the previously adopted NTR criteria that were applicable in the state. The CTR was amended on February 13, 2001. These rules contain water quality criteria for priority pollutants. Requirements of this Order are consistent with the NTR and CTR because discharges from the wastewater collection system are prohibited.

3. **State Implementation Policy.** On March 2, 2000, the State Water Board adopted the *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Policy or SIP). The SIP became effective on April 28, 2000 with respect to the priority pollutant criteria promulgated for California by the USEPA through the NTR and to the priority pollutant objectives established by the Regional Water Board in the Basin Plan. The SIP became effective on May 18, 2000 with respect to the priority pollutant criteria promulgated by the USEPA through the CTR. The State Water Board adopted amendments to the SIP on February 24, 2005 that became effective on July 13, 2005. The SIP establishes implementation provisions for priority pollutant criteria and objectives and provisions for chronic toxicity control. Requirements of this Order are consistent with the SIP because discharges from the wastewater collection facility are prohibited.
4. **Alaska Rule.** On March 30, 2000, USEPA revised its regulation that specifies when new and revised state and tribal water quality standards (WQS) become effective for CWA purposes (40 C.F.R. § 131.21, 65 Fed. Reg. 24641 (April 27, 2000)). Under the revised regulation (also known as the Alaska rule), new and revised standards submitted to USEPA after May 30, 2000, must be approved by USEPA before being used for CWA purposes. The final rule also provides that standards already in effect and submitted to USEPA by May 30, 2000, may be used for CWA purposes, whether or not approved by USEPA.
5. **Antidegradation Policy.** Section 131.12 requires that state water quality standards include an antidegradation policy consistent with the federal policy. The State Water Board established California's antidegradation policy in State Water Board Resolution No. 68-16. Resolution No. 68-16 incorporates the federal antidegradation policy where the federal policy applies under federal law. Resolution No. 68-16 requires that existing water quality be maintained unless degradation is justified based on specific findings. The Regional Water Board's Basin Plan implements, and incorporates by reference, both the State and federal antidegradation policies. The permitted discharge must be consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16. Because this Order prohibits discharge, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.
6. **Anti-Backsliding Requirements.** Sections 402(o)(2) and 303(d)(4) of the CWA and federal regulations at title 40, Code of Federal Regulations<sup>2</sup> section 122.44(l) prohibit backsliding in NPDES permits. These anti-backsliding provisions require that effluent limitations in a reissued permit must be as stringent as those in the previous permit, with some exceptions in which limitations may be relaxed. Because this Order does not allow any discharges, it is consistent with the antidegradation provisions of section 131.12 and Resolution No. 68-16.

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<sup>2</sup> All further regulatory references are to title 40 of the Code of Federal Regulations unless otherwise indicated.

#### **D. Impaired Water Bodies on CWA 303(d) List**

On June 28, 2007, the USEPA approved a revised list of impaired water bodies prepared by the State [hereinafter referred to as the 303(d) list], pursuant to provisions of CWA section 303(d) requiring identification of specific water bodies where it is expected that water quality standards will not be met after implementation of technology-based effluent limitations on point sources. Lower and Central San Francisco Bay are listed as impaired water bodies. The pollutants impairing these water bodies include chlordane, DDT, dieldrin, dioxin compounds, exotic species, furan compounds, mercury, PCBs, dioxin-like PCBs, and selenium. The SIP requires final effluent limitations for all 303(d)-listed pollutants to be based on total maximum daily loads (TMDLs) and associated waste load allocations (WLAs). Because this Order prohibits discharge, a detailed discussion of the Regional Water Board's process of developing TMDLs, WLAs and resulting effluent limitations is, therefore, unnecessary.

#### **E. Other Plans, Policies and Regulations**

This Order is not based on any other plans, policies or regulations.

### **IV. RATIONALE FOR DISCHARGE PROHIBITIONS**

- 1. Discharge Prohibition III.A (no sewer system discharges to Waters of the United States):** This prohibition is based on the federal Clean Water Act, which prohibits discharges of wastewater that does not meet secondary treatment standards as specified in 40 CFR Part 133. Additionally, the Basin Plan prohibits discharge of raw sewage or any waste failing to meet waste discharge requirements to any waters of the basin.
- 2. Discharge Prohibition III.B (no sewer system discharges shall create a nuisance as defined in California Water Code Section 13050(m)):** This prohibition is based on California Water Code Section 13263, which requires the Regional Water Board to prescribe waste discharge requirements that prevent nuisance conditions from developing.
- 3. Discharge Prohibition III.C (no discharge of chlorine, or any other toxic substance used for disinfection and cleanup of sewage spill to any surface water body):** The Basin Plan contains a toxicity objective stating, "All waters shall be maintained free of toxic substances in concentrations that are lethal to or produce other detrimental responses to aquatic organisms." Chlorine is lethal to aquatic life.
- 4. Discharge Prohibition III.D (shall not cause or contribute to discharges from EBMUD's three wet weather facilities):** Because excessive I&I has contributed to discharges of partially treated wastewater at EBMUD's Wet Weather Facilities, in violation of Order No. R2-2009-0004, this prohibition is necessary to ensure that the Discharger properly operates and maintains its wastewater collection system (40 CFR Part 122.41(e)) so as to not cause or contribute to violations of the Clean Water Act.

This prohibition is based on 40 CFR 122.41(e) that requires permittees to properly operate and maintain all facilities, and the need for this specific prohibition results from recent changes in permit requirements for EBMUD's wet weather facilities. The requirement for

proper operation and maintenance (O&M) is already specified generically in Attachment D of this permit. However, to properly operate and maintain for I&I control is necessary because of recent changes in permit requirements for EBMUD's WWFs (CA0038440).

The changes in permit requirements for EBMUD's WWFs came about as a result of a 2007 State Water Board remand (Order WQ 2007-0004) that required the Regional Water Board revise the permit for EBMUD's WWFs to require compliance with secondary treatment effluent limitations and effluent limitations that would assure compliance with the Basin Plan or cease discharge. In January 2009, the Regional Water Board adopted Order No. R2-2009-0004 reissuing the EBMUD permit. This permit prohibited discharge from the WWFs because the WWFs were not designed to meet secondary treatment standards and compliance with effluent limitations needed to comply with the Basin Plan limitations could not be assured.

Shortly afterwards, USEPA and the Regional and State Water Boards filed suit against EBMUD for discharges in violation of the Clean Water Act-mandated requirements of Order No. R2-2009-0004, and entered into a Stipulated Order. The Stipulated Order requires EBMUD to conduct flow monitoring on satellite collection systems, adopt a regional private sewer lateral ordinance, implement an incentive program to encourage replacement of leaky private laterals, and develop an asset management template for managing wastewater collection systems.

The Discharger's entire wastewater collection system connects to EBMUD's interceptor system and contributes to discharges from the WWFs. During wet weather, I&I into the Discharger's wastewater collection system causes peak wastewater flows to EBMUD's system that the WWFs cannot fully store. This in turn causes EBMUD to discharge from the WWFs in violation of Order No. R2-2009-0004. In essence, a portion of the Discharger's wastewater is discharged by EBMUD in violation of the Clean Water Act.

Therefore, the prohibition is necessary to ensure that the Discharger properly operates and maintains its facilities to reduce I&I, and by doing so not cause or contribute to violations of Clean Water Act-mandated requirements.

At this time, the Discharger is in violation of this prohibition because excessive I&I into its collection system causes or contributes to discharges from EBMUD's WWFs. Prohibition III.D provides a narrative prohibition because information is not currently available to sufficiently specify an appropriate numeric flow limit or other more detailed set of standards necessary to eliminate the Discharger's contribution to discharges from EBMUD's WWFs. Implementation of the Stipulated Order and the development of a final remedy in the Federal Action are expected to provide the technical information necessary for the Discharger to achieve compliance with Prohibition III.D. The Regional Water Board intends to modify the Discharger's NPDES permit in the future so that compliance can be measured by a specific numeric criterion or other more detailed set of standards rather than the current narrative criterion.

## **V. RATIONALE FOR RECEIVING WATER LIMITATIONS**

Because this Order prohibits discharge, receiving water limits are unnecessary because no impacts on receiving water are allowed. Therefore, a discussion of the rationale for such limits is unnecessary.

## **VI. RATIONALE FOR MONITORING AND REPORTING REQUIREMENTS**

Section 122.48 requires that all NPDES permits specify requirements for recording and reporting monitoring results relating to compliance with effluent limitations. Because this Order prohibits discharges from the wastewater collection system there are no effluent limitations. Consistent with Standard Provisions (see below) and Provision IV.B.2, the Discharger must still notify the Regional Water Board and submit a written report if discharges occur in violation of Prohibitions III.A-C.

## **VII. RATIONALE FOR PROVISIONS**

### **A. Standard Provisions**

Standard Provisions, which apply to all NPDES permits in accordance with section 122.41, and additional conditions applicable to specified categories of permits in accordance with section 122.42, are provided in Attachment D. The Discharger must comply with all standard provisions – and additional conditions under section 122.42 – that are applicable, taking into account the discharge prohibitions in this Order.

### **B. Special Provisions**

#### **1. Enforcement of Prohibition III.A**

This provision is based on 40 CFR 122.41 (n) regarding treatment facility upset and affirmative defense.

#### **2. Proper Sewer System Management and Reporting, and Consistency with Statewide Requirements**

This provision is to explain the Order's requirements as they relate to the Discharger's collection system, and to promote consistency with the State Water Resources Control Board adopted Statewide General Waste Discharge Requirements for Sanitary Sewer Systems and a related Monitoring and Reporting Program (Order No. 2006-0003-DWQ).

The General Order requires public agencies that own or operate sanitary sewer systems with greater than one mile of pipes or sewer lines to enroll for coverage under the General Order. The General Order requires agencies to develop sanitary sewer management plans (SSMPs) and report all sanitary sewer system discharges, among other requirements and prohibitions. Furthermore, the General Order contains requirements for operation and maintenance of collection systems and for reporting and mitigating sewer system discharges. The Discharger must comply



with both the General Order and this Order. The Discharger and public agencies that are discharging wastewater into the facility were required to obtain enrollment for regulation under the General Order by December 1, 2006.

## **VIII. PUBLIC PARTICIPATION**

The Regional Water Board is considering the issuance of waste discharge requirements (WDRs) that will serve as a National Pollutant Discharge Elimination System (NPDES) permit for the Discharger's sewer collection system. As a step in the WDR adoption process, the Regional Water Board staff has developed tentative WDRs. The Regional Water Board encourages public participation in the WDR adoption process.

### **A. Notification of Interested Parties**

The Regional Water Board has notified the Discharger and interested agencies and persons of its intent to prescribe waste discharge requirements for the discharge and has provided them with an opportunity to submit their written comments and recommendations. Notification was provided through the following: (a) an electronic copy of this Order was relayed to the Discharger, and (b) the Oakland Tribune published a notice that this item would appear before the Regional Water Board on September 9, 2009. Subsequent to this notification, additional notification was provided electronically to interested parties on August 10, 2009, that this item would appear before the Regional Water Board on November 18, 2009.

### **B. Written Comments**

The staff determinations are tentative. Interested persons are invited to submit written comments concerning these tentative WDRs. Comments must be submitted either in person or by mail to the Executive Officer at the Regional Water Board at the address above on the cover page of this Order.

To be fully responded to by staff and considered by the Regional Water Board, written comments were originally requested to be received at the Regional Water Board offices by 5:00 p.m. on August 17, 2009. This written comment deadline was later extended to October 20, 2009, by the notification above. This deadline was further extended until October 23, 2009, by an email dated October 20, 2009.

### **C. Public Hearing**

The Regional Water Board will hold a public hearing on the tentative WDRs during its regular Board meeting on the following date and time and at the following location:

Date: November 18, 2009  
Time: 9:00 a.m.  
Location: Elihu Harris State Office Building  
1515 Clay Street, 1st Floor Auditorium  
Oakland, CA 94612

Interested persons are invited to attend. At the public hearing, the Regional Water Board will hear testimony, if any, pertinent to the discharge, WDRs, and permit. Oral testimony will be heard; however, for accuracy of the record, important testimony should be in writing.

Please be aware that dates and venues may change. Our Web address is [www.waterboards.ca.gov/sanfranciscobay/](http://www.waterboards.ca.gov/sanfranciscobay/) where you can access the current agenda for changes in dates and locations.

#### **D. Waste Discharge Requirements Petitions**

Any aggrieved person may petition the State Water Resources Control Board to review the decision of the Regional Water Board regarding the final WDRs. The petition must be submitted within 30 days of the Regional Water Board's action to the following address:

State Water Resources Control Board  
Office of Chief Counsel  
P.O. Box 100, 1001 I Street  
Sacramento, CA 95812-0100

#### **E. Information and Copying**

The Report of Waste Discharge (RWD), related documents, and special provisions, comments received, and other information are on file and may be inspected at the address above at any time between 8:30 a.m. and 4:45 p.m., Monday through Friday. Copying of documents may be arranged through the Regional Water Board by calling (510) 622-2300.

#### **F. Register of Interested Persons**

Any person interested in being placed on the mailing list for information regarding the WDRs and NPDES permit should contact the Regional Water Board, reference this facility, and provide a name, address, and phone number.

#### **G. Additional Information**

Requests for additional information or questions regarding this order should be directed to Robert Schlipf at (510) 622-2478 or [RSchlipf@waterboards.ca.gov](mailto:RSchlipf@waterboards.ca.gov).

**ATTACHMENT G – Regional Water Board May 1, 2008, letter**

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**EXHIBIT B**

REQUEST FOR PREPARATION OF THE RECORD

(SEE ATTACHED SIGNED COPY OF REQUEST FOR PREPARATION OF THE  
ADMINISTRATIVE RECORD CONCERNING ADOPTION OF ORDER NO. R2-2009-0084  
(NPDES PERMIT FOR CA0038504))

**EXHIBIT B**

**CITY OF PIEDMONT  
CALIFORNIA**

Office of City Attorney



December 17, 2009

Bruce H. Wolfe, Executive Officer  
California Regional Water Quality Control Board,  
San Francisco Region  
1515 Clay Street, Suite 1400  
Oakland, CA 94612

**RE: Request for Preparation of the Administrative Record Concerning Adoption of  
Order No. R2-2009-0084 (NPDES Permit for CA0038504)**

Dear Mr. Wolfe:

On November 18, 2009, the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board") adopted Order No. R2-2009-0084, Waste Discharge Requirements for the City of Piedmont ("Permittee") Sanitary Sewer Collection System. The Order is also National Pollutant Discharge Elimination System Permit No. CA0038504 ("Permit"). The Permittee intends to file a Petition for Review of the Order and the Permit.

With this letter, the Permittee is respectfully requesting that the Regional Board prepare and deliver to the undersigned the full administrative record and proceedings related to the Permit ("Administrative Record"). The Permittee requests that the Administrative Record for the Permit include, but not be limited to, the following documents:

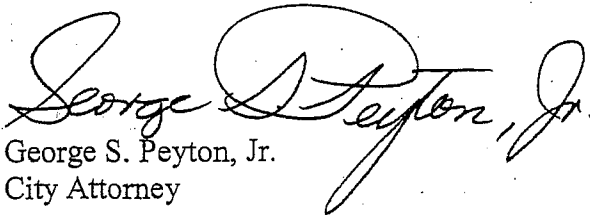
- (1) a copy of the tape recordings, transcripts and/or notes regularly made during each and every public meeting at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, approved or included on the public agenda;
- (2) the agendas and minutes of any public meeting or hearing at which the Permit, or proposed related actions, were or should have been considered, discussed, acted upon, or approved;
- (3) a copy of all draft and tentative versions of the Permit;
- (4) a copy of the Permit as adopted;
- (5) any and all documents or other evidence, regardless of authorship, relied upon, relating to, or used to formulate the requirements contained in any draft, tentative, or adopted version of the Permit;

- (6) any and all documents received by the Regional Board from the Permittee or its employees, agencies, consultants, or attorneys pertaining to the draft, tentative, or adopted versions of the Permit;
- (7) ~~any and all documents received by the Regional Board from any individual,~~  
company, partnership, corporation, agency, trade organization, and/or government entity (other than the Permittee), pertaining to the draft, tentative or adopted versions of the Permit;
- (8) any document or material incorporated by reference by the Permittee, an individual, company, partnership, corporation, agency, trade organization, and/or government entity in any document submitted to the Regional Board pertaining to the draft, tentative or adopted version of the Permit;
- (9) any record of any type of communication among members or staff of the Regional Board, or between or among the Regional Board or its staff and other persons or agencies pertaining to the draft, tentative or adopted versions of the Permit.

It should be noted that the Petition to be filed on behalf of the Permittee does request that the matter be held in abeyance until further notice. Therefore, provided that the State Board agrees to hold the Permittee's petition in abeyance, preparation of the Administrative Record need not need commence unless and until the Permittee's petition is taken out of abeyance.

Thank you for your cooperation in this matter.

Sincerely,



George S. Peyton, Jr.  
City Attorney

cc: Geoffrey L. Grote, City Administrator  
Lawrence A. Rosenberg, Director of Public Works